

No. 92

THE AMERICAN EXCHANGERS COMPANY

THE AMERICAN EXCHANGERS COMPANY
1000 BROADWAY, NEW YORK CITY
1000 BROADWAY, MIAMI, FLORIDA

Supreme Court of the United States
OCTOBER TERM, 1962

No. 942

UNITED STATES, APPELLANT

vs.

WIESENFELD WAREHOUSE COMPANY

**APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

INDEX

Original Print

Record from the United States District Court for
the Southern District of Florida, Jacksonville
Division

Information	1	1
Motion to dismiss information.....	9	10

Record from the United States District Court for
the Middle District of Florida, Jacksonville Di-
vision

Order granting motion to dismiss.....	12	11
Docket entries	14	13

Notice of appeal to the Supreme Court of the United States	15	15
---	----	----

Clerk's certificate (omitted in printing).....	17	16
--	----	----

Order noting probable jurisdiction.....

18	17
----	----

[fol. 1]

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

F.D.C. No. 47122

[File Endorsement Omitted]

No. 12,256-Cr-J

(21 U.S.C. 331 and 333)

UNITED STATES OF AMERICA

v.

WIESENFELD WAREHOUSE COMPANY, a corporation

INFORMATION—filed July 19, 1962

COUNT I

The United States Attorney charges:

That Wiesenfeld Warehouse Company, a corporation organized and existing under the laws of the State of Florida, and trading and doing business at Jacksonville, State of Florida, the defendant herein did, at Jacksonville, State of Florida, within the Jacksonville Division of the Southern District of Florida, on or about April 28, 1961, receive at Jacksonville, State of Florida, a number of bags of rice, a food, which said food had been shipped in interstate commerce from Rayne, Louisiana, by Louisiana State Rice Milling Company, Inc.;

That displayed upon said bags was certain labeling which consisted, among other things, of the following printed and graphic matter:

10 LBS. NET WT.
LONG GRAIN RICE

Louisiana State Rice Milling Company, Inc.
Abbeville, Louisiana

That thereafter, to wit, within the period from on or about April 28, 1961 to on about August 21, 1961, and while said food was being held for sale after shipment in interstate commerce, as aforesaid, the said defendant did, at Jacksonville, State of Florida, within the Jacksonville Division of the Southern District of Florida, cause a number of bags of said food to be held in a building that was accessible to rodents, birds, and insects and did cause said food to be exposed to contamination by rodents, birds, and insects;

[fol. 2] That said act of causing said food to be held in said building, as aforesaid, and to be exposed to contamination, as aforesaid, resulted in said food being adulterated within the meaning of 21 U.S.C. 342(a)(3), in that said food consisted in part of a filthy substance by reason of the presence therein of rodent excreta, insects, insect larvae and insect pupae;

That said act of causing said food to be held in said building, as aforesaid, and to be exposed to contamination, as aforesaid, resulted in said food being further adulterated within the meaning of 21 U.S.C. 342(a)(4), in that said food was held under insanitary conditions whereby it may have become contaminated with filth;

That said act of causing said food to be held in said building, as aforesaid, and to be exposed to contamination, as aforesaid, was an act caused to be done by said defendant while said food was being held for sale after shipment in interstate commerce, which resulted in said food being adulterated, as aforesaid, in violation of Title 21, United States Code, Section 331(k).

COUNT II

The United States Attorney further charges:

That Wiesenfeld Warehouse Company, a corporation organized and existing under the laws of the State of Florida, and trading and doing business at Jacksonville, State of Florida, the defendant herein did, at Jacksonville, State of Florida, within the Jacksonville Division of the Southern District of Florida, on or about April 28, 1961, receive at Jacksonville, State of Florida, a number

3

of bags of rice, a food, which said food had been shipped in interstate commerce from Rayne, Louisiana, by Louisiana State Rice Milling Company, Inc.;

That displayed upon said bags was certain labeling which consisted, among other things, of the following printed and graphic matter:

WATER MAID
10 LBS. NET WT.
RICE

Louisiana State Rice Milling Company, Inc.
Abbeville, Louisiana

[fol. 3] That thereafter, to wit, within the period from on or about April 28, 1961 to on or about August 22, 1961, and while said food was being held for sale after shipment in interstate commerce, as aforesaid, the said defendant did, at Jacksonville, State of Florida, within the Jacksonville Division of the Southern District of Florida, cause a number of bags of said food to be held in a building that was accessible to rodents, birds, and insects and did cause said food to be exposed to contamination by rodents, birds, and insects;

That said act of causing said food to be held in said building, as aforesaid, and to be exposed to contamination, as aforesaid, resulted in said food being adulterated within the meaning of 21 U.S.C. 342(a)(3), in that said food consisted in part of a filthy substance by reason of the presence therein of insects, insect larvae, insect pupae, and insect cast skins;

That said act of causing said food to be held in said building, as aforesaid, and to be exposed to contamination, as aforesaid, resulted in said food being further adulterated within the meaning of 21 U.S.C. 342(a)(4), in that said food was held under insanitary conditions whereby it may have become contaminated with filth;

That said act of causing said food to be held in said building, as aforesaid, and to be exposed to contamination, as aforesaid, was an act caused to be done by said defendant while said food was being held for sale after shipment in interstate commerce; which resulted in said food being adulterated, as aforesaid, in violation of Title 21, United States Code, Section 331(k).

COUNT III.

The United States Attorney further charges:

That Wiesenfeld Warehouse Company, a corporation organized and existing under the laws of the State of Florida, and trading and doing business at Jacksonville, State of Florida, the defendant herein did, at Jacksonville, State of Florida, within the Jacksonville Division of the Southern District of Florida, on or about January 6, 1961, receive at Jacksonville, State of Florida, a number [fol. 4] of packages of hamburger mix, a food, which said food had been shipped in interstate commerce from Millstadt, Illinois, by Golden Dipt Manufacturing Co.;

That displayed upon said packages was certain labeling which consisted, among other things, of the following printed and graphic matter;

10 OZ. NET WT.
GOLDEN DIPT
BURGER BOY
MIX FOR HAMBURGER
GOLDEN DIPT MANUFACTURING CO.
ST. LOUIS 10, MO.

That thereafter, to wit, within the period from on or about January 6, 1961 to on or about August 22, 1961, and while said food was being held for sale after shipment in interstate commerce, as aforesaid, the said defendant did, at Jacksonville, State of Florida, within the Jacksonville Division of the Southern District of Florida, cause a number of packages of said food to be held in a building that was accessible to rodents, birds, and insects and did cause said food to be exposed to contamination by rodents, birds, and insects;

That said act of causing said food to be held in said building, as aforesaid, and to be exposed to contamination, as aforesaid, resulted in said food being adulterated within the meaning of 21 U.S.C. 342(a)(3), in that said food consisted in part of a filthy substance by reason of the presence therein of insects, insect larvae, and insect pupae;

That said act of causing said food to be held in said building, as aforesaid, and to be exposed to contamination, as aforesaid, resulted in said food being further adulterated within the meaning of 21 U.S.C. 342(a) (4), in that said food was held under insanitary conditions whereby it may have become contaminated with filth;

That said act of causing said food to be held in said building, as aforesaid, and to be exposed to contamination, as aforesaid, was an act caused to be done by said defendant while said food was being held for sale after shipment in interstate commerce, which resulted in said food being adulterated, as aforesaid, in violation of Title 21, United States Code, Section 331(k).

[fol. 5]

COUNT IV

The United States Attorney further charges:

That Wiesenfeld Warehouse Company, a corporation organized and existing under the laws of the State of Florida, and trading and doing business at Jacksonville, State of Florida, the defendant herein did, at Jacksonville, State of Florida, within the Jacksonville Division of the Southern District of Florida, on or about May 24, 1961, receive at Jacksonville, State of Florida, a number of packages of breading mix, a food, which said food had been shipped in interstate commerce from Millstadt, Illinois, by Golden Dipt Manufacturing Co.;

That displayed upon said packages was certain labeling which consisted, among other things, of the following printed and graphic matter:

5 POUNDS NET WT.
GOLDEN DIPT
ALL PURPOSE
READY MIXED BREADING
GOLDEN DIPT MFG. CO.
ST. LOUIS 10, MO.

That thereafter, to wit, within the period from on or about May 24, 1961 to on or about August 22, 1961, and while said food was being held for sale after shipment in interstate commerce, as aforesaid, the said de-

6

fendant did, at Jacksonville, State of Florida, within the Jacksonville Division of the Southern District of Florida, cause a number of packages of said food to be held in a building that was accessible to rodents, birds, and insects, and did cause said food to be exposed to contamination by rodents, birds, and insects;

That said act of causing said food to be held in said building, as aforesaid, and to be exposed to contamination, as aforesaid, resulted in said food being adulterated within the meaning of 21 U.S.C. 342(a)(3), in that said food consisted in part of a filthy substance by reason of the presence therein of insects, insect larvae, and insect pupae;

That said act of causing said food to be held in said building, as aforesaid, and to be exposed to contamination, as aforesaid, resulted in said food being further adulterated within the meaning of 21 U.S.C. 342(a)(4), in that said food was held under insanitary conditions, whereby it may have become contaminated with filth;

[fol. 6] That said act of causing said food to be held in said building, as aforesaid, and to be exposed to contamination, as aforesaid, was an act caused to be done by said defendant while said food was being held for sale after shipment in interstate commerce, which resulted in said food being adulterated, as aforesaid, in violation of Title 21, United States Code, Section 331(k).

COUNT V

The United States Attorney further charges:

That Wiesenfeld Warehouse Company, a corporation organized and existing under the laws of the State of Florida, and trading and doing business at Jacksonville, State of Florida, the defendant herein did, at Jacksonville, State of Florida, within the Jacksonville Division of the Southern District of Florida, on or about July 24, 1961, receive at Jacksonville, State of Florida, a number of bags of rice, a food, which said food had been shipped in interstate commerce from Carlisle, Arkansas, by Louisiana State Rice Milling Co., Inc.;

That displayed upon said bags was certain labeling which consisted among other things, of the following printed and graphic matter:

10 LBS. NET WT.

MAHATMA
LONG GRAIN RICE

Louisiana State Rice Milling Company, Inc.

Abbeville, Louisiana

and subsidiary

Arkansas State Rice Milling Co.

Carlisle, Arkansas

That thereafter, to wit, within the period from on or about July 24, 1961 to on or about December 1, 1961, and while said food was being held for sale after shipment in interstate commerce, as aforesaid, the said defendant did, at Jacksonville, State of Florida, within the Jacksonville Division of the Southern District of Florida, cause a number of bags of said food to be held in a building that was accessible to rodents, birds, and insects and did cause said food to be exposed to contamination by rodents, birds, and insects;

[fol. 7] That said act of causing said food to be held in said building, as aforesaid, and to be exposed to contamination, as aforesaid, resulted in said food being adulterated within the meaning of 21 U.S.C. 342(a)(3), in that said food consisted in part of a filthy substance by reason of the presence therein of rodent urine, insects, insect larvae, insect pupae, and insect cast skins;

That said act of causing said food to be held in said building, as aforesaid, and to be exposed to contamination, as aforesaid, resulted in said food being further adulterated within the meaning of 21 U.S.C. 342(a)(4), in that said food was held under insanitary conditions whereby it may have become contaminated with filth;

That said act of causing said food to be held in said building, as aforesaid, and to be exposed to contamination, as aforesaid, was an act caused to be done by said defendant while said food was being held for sale after shipment in interstate commerce, which resulted in said

food being adulterated, as aforesaid, in violation of Title 21, United States Code, Section 331(k).

COUNT VI

The United States Attorney further charges:

That Wiesenfeld Warehouse Company, a corporation organized and existing under the laws of the State of Florida, and trading and doing business at Jacksonville, State of Florida, the defendant herein did, at Jacksonville, State of Florida, within the Jacksonville Division of the Southern District of Florida, on or about September 6, 1961, receive at Jacksonville, State of Florida, a number of bags of rice, a food, which said food had been shipped in interstate commerce from Carlisle, Arkansas, by Louisiana State Rice Milling Company, Inc.;

That displayed upon said bags was certain labeling which consisted, among other things, of the following printed and graphic matter:

WATER
MAID
RICE
10 LBS. NET WT.

Louisiana State Rice Milling Company, Inc.

Abbeville, Louisiana
and subsidiary

Arkansas State Rice Milling Co.
Carlisle, Arkansas

[fol. 8] That thereafter, to wit, within the period from on or about September 6, 1961 to on or about December 4, 1961, and while said food was being held for sale after shipment in interstate commerce, as aforesaid, the said defendant did, at Jacksonville, State of Florida, within the Jacksonville Division of the Southern District of Florida, cause a number of bags of said food to be held in a building that was accessible to rodents, birds, and insects and did cause said food to be exposed to contamination by rodents, birds, and insects;

That said act of causing said food to be held in said building, as aforesaid, and to be exposed to contamina-

tion, as aforesaid, resulted in said food being adulterated within the meaning of 21 U.S.C. 342(a)(3), in that said food consisted in part of a filthy substance by reason of the presence therein of insects, insect larvae, insect pupae and insect cast skins;

That said act of causing said food to be held in said building, as aforesaid, and to be exposed to contamination, as aforesaid, resulted in said food being further adulterated within the meaning of 21 U.S.C. 342(a)(4); in that said food was held under insanitary conditions whereby it may have become contaminated with filth;

That said act of causing said food to be held in said building, as aforesaid, and to be exposed to contamination, as aforesaid, was an act caused to be done by said defendant while said food was being held for sale after shipment in interstate commerce, which resulted in said food being adulterated, as aforesaid, in violation of Title 21, United States Code, Section 331(k).

/s/ Edward F. Boardman

UNITED STATES ATTORNEY for the
Southern District of Florida

By: /s/ William J. Hamilton, Jr.
Assistant United States Attorney

[fol. 9]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

[File endorsement omitted]

No. 12,256-Cr-J

[Title omitted]

MOTION TO DISMISS INFORMATION—Filed August 2, 1962

Comes now the defendant, Wiesenfeld Warehouse Company, a corporation organized and existing under the laws of the State of Florida, and trading and doing business at Jacksonville, Florida, by its undersigned attorneys, and moves the Court to dismiss information filed in this cause by the United States Attorney and each and every count therein contained, to wit: Count I, Count II, Count III, Count IV, Count V, and Count VI, upon the following grounds as to each and every count:

1. The information and each and every count therein contained do not state facts sufficient to constitute an offense under the laws of the United States.
2. The Statute upon which the information and each and every count therein contained are based, to wit: Title 21, United States Code, Sections 331 (K), 342 (a) (3) and (4), is unconstitutional as being so indefinite, uncertain, and obscure that it does not inform one accused thereunder of the nature and cause of the accusation in violation of the Sixth Amendment of the United States Constitution, and further said statute is unconstitutional as being a deprivation of life, liberty, and property without due process of law in violation of the Fifth Amendment of the United States Constitution.

/s/ James S. Taylor

ULMER, MURCHISON, KENT,
ASHBY & BALL

850 Florida National Bank Building
Jacksonville 2, Florida

[Certificate of service omitted in printing]

[fols. 10 - 11] * * *

[fol. 12]

IN UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

{File endorsement omitted]

No. 12,256-Cr-J

UNITED STATES OF AMERICA

v.

WIESENFELD WAREHOUSE COMPANY, a corporation

ORDER GRANTING MOTION TO DISMISS—December 21, 1962

This cause was taken under advisement on October 19, 1962, on defendant's motion to dismiss made in open court. The plaintiff and defendant now having filed briefs, it appears that said motion should be granted.

21 U.S.C. 331 (k) prohibits the specific acts of alteration, mutilation, destruction, obliteration or removal of the labeling of, a food, drug, device or cosmetic. This enumeration of specific acts is followed by the general term, "or the doing of any other act." The information alleges that adulteration was caused by the defendant's act of holding certain food in its warehouse, which was accessible to rodents, birds and insects.

The government contends that one of the purposes of Congress in enacting Section 331(k) was to prohibit the holding of food after shipment in interstate commerce under insanitary conditions whereby such food may become contaminated with filth, and cites House Report No. 807, 80th Congress, 1st Session, July 8, 1947 at page 3:

[fol. 13] "As so amended the subsection will penalize among other acts resulting in adulteration or misbranding, the act of holding articles under unsanitary conditions whereby they become contaminated with filth or rendered injurious to health."

This not only makes one holding such goods an insurer but subjects him to criminal action. Under the rule of

construction known as *eiusdem generis*, where a general term follows an enumeration of specific classes of activities, the general term will be limited to the same general nature as those enumerated. The rule is applicable only where intent is not discoverable from the statutory language, and it may not be used to defeat the obvious purpose of legislation. *United States v. Alpers*, 338 U.S. 680 (1950). Congress may have intended the construction advocated by the prosecution, however, the statute, as it is presently written, is too vague and indefinite to apply to the mere act of "holding" goods. In an effort to uphold the statute as constitutional, strict rules of construction must be applied; therefore the information does not allege an offense under Section 331(k), and it is thereupon:

ORDERED that defendant's motion to dismiss is granted.

DONE AND ORDERED in Chambers, at Jacksonville, this 21st day of December, 1962.

/s/ Bryan Simpson
UNITED STATES DISTRICT JUDGE

United States Attorney (3)
(Hamilton)

Ulmer, Murchison, Kent, Ashby & Ball

[fol. 14]

No. 12, 256-Cr-J.

CRIMINAL DOCKET

IN UNITED STATES DISTRICT COURT

(Title of Case)

THE UNITED STATES

vs.

WIESENFELD WAREHOUSE COMPANY, a corporation

(Attorneys)

For U.S.:

Wm. J. Hamilton, Jr.

For Defendant:

Ulmer, Murchison, Kent, Ashby,
& Ball
Jacksonville, Fla.

(James Taylor)

(Statistical Record)

(Costs)

J.S. 2 mailed 7-19-62

Clerk

J.S. 3 mailed 12-21-62

Marshal

Violation Contaminated food Docket fee

Title 21, U. S. C.

Secs. 331, and 333

(Date)

DOCKET ENTRIES

- | | |
|---------------|--|
| July 19, 1962 | Information filed |
| July 23 | Praecipe for Summons |
| July 28 | Summons Issued |
| Aug. 2 | Motion to Dismiss Information |
| Aug. 3 | Arraigned and Plead Not Guilty to all Counts |

(Date)

Oct. 19

DOCKET ENTRIES (Continued)

Hearing in Open Court on Motion to Dismiss—Taken under advisement by Court

Nov. 13

Application to Transfer, Order Removing to Middle District and Order Assigning for Trial

Dec. 21

Order Granting Defendant's Motion to Dismiss R-23 (BS)

Jan. 18, 1963

Notice of Appeal to the Supreme Court of the United States

[fol. 15]

IN UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

[File endorsement omitted]

No. 12,256-Cr-J

UNITED STATES OF AMERICA

v.

WIESENFELD WAREHOUSE COMPANY, *a corporation*

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES—filed January 18, 1963

I

NOTICE IS HEREBY GIVEN that the United States of America appeals to the Supreme Court of the United States from the Order dated and entered December 21, 1962, dismissing the Information which charged the defendant in six counts with violations of Title 21, United States Code, Section 331(k). This appeal is taken pursuant to Title 18, United States Code, Section 3731.

II

The Clerk will please prepare a transcript of the record for transmission to the Clerk of the Supreme Court of the United States and include therein the following:

1. Transcript of docket entries.
2. Information filed July 19, 1962.
3. Motion to dismiss filed October 19, 1962.
4. Order granting motion to dismiss dated and entered December 21, 1962.
5. This notice of appeal to the Supreme Court of the United States.

[fol. 16]

III

The following question is presented by this appeal:

Whether an information which alleges that a public warehouse company received an article of food which had been shipped in interstate commerce; that thereafter, while the food was being held for sale, the company caused the food to be held in a building that was accessible to rodents, birds, and insects and thereby caused the food to be exposed to contamination from these sources; and that the act of causing the food to be so held resulted in the food's being adulterated in that it consisted in part of a filthy substance and in that it was held under insanitary conditions whereby it may have become contaminated with filth, charges "the doing of any other act" which constitutes a violation of 21 U.S.C. 331(k).

EDWARD F. BOARDMAN
United States Attorney

By /s/ WILLIAM J. HAMILTON, JR.
Assistant United States Attorney

[Acknowledgment of service omitted in printing]

[fol. 17] [Clerk's Certificate to foregoing
transcript omitted in printing]

[fol 18]

SUPREME COURT OF THE UNITED STATES

No. 942, October Term, 1962

UNITED STATES, APPELLANT*vs.***WIESENFELD WAREHOUSE COMPANY****ORDER NOTING PROBABLE JURISDICTION—May 20, 1963****APPEAL from the United States District Court for
the Middle District of Florida.**

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.